

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**In re:**

**Elite Infrastructure, LLC**

*Debtor.*

Case No. 20-31384-11

Chapter 11

Judge Harlin DeWayne Hale

UNOPPOSED MOTION OF MARGARET ESTRADA  
AND PATRICIA FITE FOR RELIEF FROM THE  
AUTOMATIC STAY TO PURSUE CLAIM IN STATE  
COURT

**PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.**

**ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE ST., RM. 1254, DALLAS, TX 75242-1496 BY JULY 9, 2020, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE “ADEQUATELY PROTECTED” IF THE STAY IS TO BE CONTINUED.**

**To the Honorable Harlin DeWayne Hale**

**United States Bankruptcy Judge**

1. This motion requests entry of an order authorizing the persons filing this motion to proceed with litigation against the Debtor as a nominal defendant in

state court in a wrongful death action for the purpose of establishing Debtor's liability as a pre-requisite for proceeding against Debtor's liability insurer.

2. The Movants are Margaret Estrada, individually and as next of kin of Javier Barraza, Jr., deceased, and Patricia Fite, surviving spouse of Randall Fite, deceased.

3. The state court litigation at issue is Case No. CJ-2019-2376, *Patricia Fite, Surviving Spouse of Randall Fite, Deceased, and Margaret Estrada, Individually and as Next of Kin of Javier Barraza, Jr., Deceased v. Lagoon Water Logistics, LLC and Elite Infrastructure LLC*, in the District Court of Oklahoma County, Oklahoma (the State Court Lawsuit). The subject matter of the State Court Lawsuit is Movants' claim against Debtor arising from a March 4, 2019 oilfield explosion in Garfield County, Oklahoma.<sup>1</sup> Randall Keith Fite, an oilfield worker, was severely injured, and his co-worker, Javier Barraza, was killed. Mr. Fite died of his injuries on November 14, 2019. Movants, the survivors of Mr. Fite and Mr. Barraza, have alleged that the explosion was caused at least in part by Debtor's negligence and seek to recover damages. The State Court Lawsuit was filed April 29, 2019 and was served on Debtor.

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<sup>1</sup> See Exhibit 1, Fite's Second Amended Petition in the State Court Lawsuit.

4. The Debtor appeared and filed an answer in the State Court Lawsuit on June 5, 2019, and filed a suggestion of bankruptcy on June 11, 2020.

5. Movant's claim against Debtor is covered by liability insurance. On information and belief, Debtor's liability insurer will pay the costs of Debtor's defense in the State Court Lawsuit, and will pay any judgment up to the limits of the policy.

6. In this motion, Movants seek relief from the stay for the purpose of proceeding against Debtor as a nominal defendant in the State Court Lawsuit in order to establish liability and recover against Debtor's liability insurance only. **Movants do not seek recovery against any assets of Debtor or the Estate through the State Court Lawsuit, and will agree to condition any order lifting the stay accordingly.** *See in re Edgeworth*, 993 F.2d 51, 55 (5th Cir. 1993) (the debtor's liability insurance proceeds are not property of the estate).

7. Movants submit that an order lifting the stay to permit the State Court Lawsuit to proceed is in the interests in judicial economy and the expeditious and economical determination of litigation of the parties, and is warranted in consideration of the factors enumerated in *in re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984). Further, the costs of litigation will be borne by Debtor's insurance carrier and any judgment will be enforced only against liability insurance proceeds that cannot inure to the Debtor's pecuniary benefit and that are not

property of the Estate. *Edgeworth*, at 55. Because Debtor has no cognizable interest in the proceeds of the liability insurance policy, those proceeds “are not protected by the automatic stay.” *In re Scott Wetzel Services, Inc.*, 243 B.R. 802, 805 (Bankr. M.D. Fla. 1999). Therefore, neither the Debtor nor the creditors will be prejudiced by allowing Movants to seek recovery against Debtor’s liability insurance, and the proposed relief from the automatic stay is appropriate. *Id.*, at 805–06.

8. Movants’ counsel has conferred with the Debtor’s counsel on the subject matter of this motion, and the Debtor is unopposed.

Respectfully Submitted,

**HUMPHREY LAW PLLC**

/s/ *Brian Humphrey*

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***Attorney for Movants Margaret Estrada  
and Patricia Fite***

## CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Movants have conferred with the Debtor's counsel and that Debtor is unopposed.

/s/ *Brian Humphrey*  
Brian S. Humphrey

## CERTIFICATE OF SERVICE

I hereby certify that this document was served by ECF on all persons entitled to service under FED. R. BANKR. P. 4001(a)(1) and BLR 4001-1(a) on June 25, 2020, including the following:

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